

***STATEMENT OF JULIO E. FONTANENT MALDONADO,
PRESIDENT,
PUERTO RICO BAR ASSOCIATION
to Congressional briefing on FBI misconduct in Puerto Rico
held in Washington by the Hon. John Conyers
on March 28, 2006.***

I. THE ILUSTRE COLEGIO DE ABOGADOS DE PUERTO RICO

The Colegio de Abogados de Puerto Rico (Colegio) is the oldest professional organization in Puerto Rico and the third in the American hemisphere. It was founded in 1840, and has, since its founding, operated as a mandatory membership organization for the benefit and representation of all attorneys licensed to practice law in Puerto Rico. I have been privileged to preside the Colegio since 2004, and have been designated to represent it here today.

In addition to providing continuing education and other multiple services for members, the Colegio provides services to the public through its Pro Bono program of legal services, and investigates disciplinary complaints. Much of the important work of the Colegio is carried out in its commissions. Throughout many decades, its Human Rights and Civil Rights Commissions have investigated and documented violations of the fundamental rights of Puerto Ricans. There is also a special commission on death penalty because among others reasons, the federal government federal seek its imposition in federal criminal cases in Puerto Rico, nevertheless it is prohibited by the Puerto Rican Constitution and it is inconsistent with our abolitionist tradition.

Finally, in light of the lack of progress in the official investigations into the events of September 23, 2005, the Colegio created a special investigating commission to make inquiry and determine what, if any, human and civil rights violations occurred.¹ The Colegio de Abogados appears here today in order to shed some light on the three important questions identified by Congressman Conyers as defining the purpose of this hearing.

The Colegio de Abogados de Puerto Rico is deeply troubled by the pattern of intervention, political repression, use of excessive force and consistent abuses against the Puerto Rican people in their legitimate exercise of their constitutional and human rights by the Federal Bureau of Investigation (FBI) and other police and intelligence agencies. If these actions are not precisely and immediately stayed, the FBI will be left to disregard our rights at will, and in the process be immune from any responsibility for them, in open contravention to the Rule of Law.

II. THE BITTER LEGACY OF THE FBI'S PRESENCE IN PUERTO RICO

I appear before you today to express the grave concern of the Colegio de Abogados, as well as the public in general, over a series of interventions by the Federal Bureau of Investigation in Puerto Rico beginning in late September of last year that represent violations of the civil and human rights of Puerto Ricans. But before entering into the details of these recent events, **I must remind our distinguished audience of the long and bitter history of FBI interventions in the political affairs of Puerto Rico that have led us to conclude that in our country, the FBI**

¹ The Commission still investigating these incidents and their findings are not public yet, even for the president of el Colegio ; therefore the information included in this statement is based only in the public information disclosed by the local authorities and the puertorrican media. By no means said information compromise the findings of el Colegio's commission, since it did not participated in the preparation of this statement.

acts lawlessly and with complete impunity. We deeply appreciate the concern of Congressman Conyers and those who worked to make this hearing possible, including Congressmen and woman Nydia Velázquez, Luis Gutiérrez, José Serrano, Charles Rangel and others.

The bitter history includes, of course, the FBI's well-known and well-documented efforts to disrupt, discredit and destroy the independence movement, under the rubric of COINTELPRO. These efforts were aptly characterized by an aide to former President Carter as a "decade of hanky-panky" which mocked the law of self determination.² They included, but were not limited to direct intervention designed to skew the 1967 referendum on status away from independence.³ Despite the documentation, there are also many darker aspects that have never been clarified, including the FBI's role in the planning and initial cover-up of the murders at Cerro Maravilla⁴.

As the result of the release of hundreds of thousands of pages of COINTELPRO and other documents related to the role of the FBI in political repression in Puerto Rico, on March 16, 2000, Congressman José Serrano asked FBI Director Louis Freeh to answer specific questions about the FBI's role in the deaths of several prominent *independentistas*, the torture of Nationalist Party President Pedro Albizu Campos, and the extent of its collaboration in the illegal compilation of files on over 135,000 suspected "separatists and subversives" in Puerto Rico. If the FBI ever answered these questions clearly and directly, the information has not reached Puerto Rico that I am aware of, and I am confident Rep. Serrano would have made certain that it

² Memorandum to Al Stern (aide to then President Carter) from "YFC" dated May 9, 1978, "Subject: FBI files," commenting on review of COINTELPRO documentation on Puerto Rico, released during the 1991-1992 hearings of the Committee on the Judiciary, Senate of Puerto Rico, on the planning and cover-up of the murders at Cerro Maravilla.

³ See, e.g., documents reproduced in Churchill and Vander Wall, The Cointel Papers (South End Press 1990, Chapter 4, "COINTEPROO, the Puerto Rican Independence Movement); documents quoted in Anne Nelson, Murder Under Two Flags, (Ticknor & Fields 1986 at 85-99).

⁴ See, Nelson, *supra*. And see generally, Noriega v. Hernández Colón, 122 D.P.R. 650 (1988).

did.

This is not a hearing on the history of the FBI in Puerto Rico, but it is impossible to appreciate the meaning and the concern raised by the recent events without understanding two critical facts of our history. One is the violent and illegal repression of the independence movement at the hands of the FBI and others. The other is the role of the Puerto Rican press in discovering and making public the facts relevant to the FBI's role in repressing the independence movement. Of concern today are the FBI's actions which resulted in the death of Filiberto Ojeda Ríos⁵ last September 23, and its February 10, 2006 raids on offices and homes of ecumenical community organizations and their staff, among others during which members of the press were assaulted by the FBI. But once again, to understand the present, we must revert to the past.

Long before September 11, 2001, the FBI was using the label of "terrorism" in an effort to frighten citizens of the United States into relinquishing their constitutional rights. Long before the menace was identified as coming from the middle-east, the finger was pointed at Puerto Ricans who advocated independence for their country. In 1985, the FBI staged massive military-style raids throughout Puerto Rico, searching over fifty locations and arresting several dozen prominent *independentistas*, including attorneys, school teachers, writers, farmers and others. The awesome display of helicopters, long-weapons, dogs, and sharp-shooters on roof-tops was justified by the premise that the arrested were "terrorists" who represented a threat to the stability of the United States.⁶ All of those arrested were initially accused with conspiring to overthrow

⁵ Ojeda Ríos admitted in public statements to being a founder of a militant underground organization known as the Ejército Popular Boricua–Los Macheteros, which, during the period between 1978 and 1983, engaged in armed actions in pursuit of independence. There is no evidence it ever engaged in violent acts against state or local government or Puerto Rican civilians.

⁶ Today, all but one of those arrested–Filiberto Ojeda Ríos–are contributing to our society as teacher, lawyer, mechanic, farmer, translator, trade unionist, etc..

the government of the United States in Puerto Rico, but that charge was eventually replaced with one of conspiring to interfere with interstate commerce by carrying out a robbery in Hartford, Connecticut. One of those arrested was Ojeda-Ríos. The arrests were widely criticized for the unnecessary display of force, obviously intended to intimidate.

The pretrial hearings and trial of the case lasted for many years, during which the FBI and the Department of Justice were soundly criticized by the *New York Times*, the *Hartford Courant* and other US press, and even more so by the press in Puerto Rico, for invading the privacy of Puerto Ricans (it recorded conversations of married couples in the shower), for violating United States laws requiring prompt sealing of electronic surveillance tapes,⁷ for violating the prohibition on wiretapping in the Puerto Rican Constitution,⁸ for securing the arrest of Luz Berríos Berríos and her children in Mexico where she was interrogated and tortured until she signed a false confession, then immediately turned over to the FBI, and for keeping Ojeda in preventive detention for thirty-three months.⁹

Ultimately he was released on bail, defended himself from a charge of shooting at the FBI at the time of his 1985 arrest, and acquitted by a Puerto Rican jury in federal court. International human rights organizations, including Amnesty International, sent observers and wrote reports expressing their concern about the human rights violations involved in the Hartford trial and Ojeda Ríos' confinement (a recent quadruple-bypass patient, he was at one point kept chained to a bed on a military base). Still on bail in the Hartford case, on September 23, 1990, he sent a message to Lares, where Puerto Rican *independentistas* gather every year to commemorate the first pro-independence uprising on that date in 1868, to announce that he had returned to

⁷ *United States v. Ojeda Ríos*, 495 U.S. 257 (1990).

⁸ *Camacho v. Autoridad de Teléfonos*, 862 F.2d 482 (1st Cir. 1988).

⁹ *See United States v. Ojeda Ríos*, 846 F.2d 167 (2nd Cir. 1988).

clandestine life. The FBI had been looking for him for fifteen years when they shot and killed him on the anniversary of that uprising this year. He had been tried, convicted, and sentenced, *in absentia* (a procedure a subsequent Supreme Court case determined to be unconstitutional) to consecutive maximum terms of prison, for a total of 55 years.¹⁰

The FBI, not Ojeda Ríos, chose the date for the confrontation. It did so to send a message to Puerto Rico's independence movement. It was a message of brutal repression: a single bullet from a sharpshooter was all that was needed to reinforce decades of repression.

III. THE FBI'S CONDUCT ON SEPTEMBER 23, 2005.

Puerto Ricans were shocked and horrified by the FBI's conduct on September 23, 2005. According to many sources it shot and left to bleed to death a 72 year-old man, taken by surprise at home alone with his wife. No one was allowed to approach his home, where blood could be seen coming from under the front door and down the steps, for over sixteen hours after the first shots fired by the FBI. They also occupied the entire surrounding neighborhood, controlling the entrance and exits of residents, or rather, permitting neither entrance nor exit, keeping men, women and children prisoner in their own homes, or preventing them from reaching their homes, and subjecting many to intense and hostile interrogation. In order to carry out its military operation under cover of darkness, the FBI also suspended the electric power to neighboring areas, and refused to allow **doctors, lawyers, and media present to communicate with Ojeda,**

¹⁰ Crosby v. United States, 506 U.S. 255 (1993).

who had indicated his desire to use a member of the press to negotiate.¹¹

Once again, the criticism of the FBI in all the national (Puerto Rican) media—written press, TV and radio—was overwhelming, reflecting a national consensus about the dignity of human life and the FBI’s apparent indifference to it. In marches, protests, speeches, articles and editorials, the Puerto Rican public and the press expressed its rejection of the FBI’s reliance upon overwhelming fire-power and the lack of respect for human and civil rights.

The people of Puerto Rico demand information and explanation. Puerto Rico’s Department of Justice has been prevented from carrying out its duty from the very beginning, when the FBI refused to allow local prosecutors, who must be present before a body is removed from the scene of a violent death, to even approach the residence where Ojeda was shot. The FBI refused to even admit to a lawyer for Ojeda’s family that it had custody of his body on the morning after he was shot and mortally wounded. It has since refused to identify the agents involved in the raid, and turn over critical evidence required by the Department of Justice for its investigation.

As was the case with the murders of the two unarmed independentistas at Cerro Maravilla in 1978, the Puerto Rican press worked diligently to shed some light on what actually happened during those dark hours in which the FBI allowed no one to witness its actions in Hormigueros. It was soon to feel the wrath of the FBI directed against it.

IV. THE FEBRUARY 10, 2006 RAIDS AND ASSAULT ON JOURNALISTS

¹¹ Relations between the FBI and the Puerto Rican press were no doubt affected by the fact that during the time the FBI was looking for him, Ojeda would from time to time give interviews to the press. In one case, this resulted in a subpoena to a reporter and threats that she would be jailed for contempt. See, Nan Levinson, *Outspoken: Free Speech Stories* (U. Ca. Press 2003)(Chapter 4, “La Mordaza”about the grand jury subpoena served upon Puerto Rican journalist Daisy Sánchez after her interview of Ojeda Ríos).

The events of February 10, 2006, are especially troubling. Under the authority of still-sealed search warrants, the FBI did in fact search the homes and businesses of religious, social, community and pro-independence leaders. **Property was destroyed, persons assaulted and lawyers impeded from accessing clients. Journalists felt a violent physical restraint and attack in an assault not only against them personally but against the right to the free flow of important information on government action that is the rightful inheritance of every member of our society.**

It was against the previously described background that the FBI carried out raids on February 10 of this year, beginning at the offices of the Ecumenical Committee for Community Economic Development, the home of its founder, a presbyterian minister, and others involved in providing community services not provided by the government in Puerto Rico—all prominent and outspoken *independentistas*. The identically worded warrants authorized seizure of six categories of documents and information in any and all form—without limitation as to subject matter or relation to illegal activities of any sort. Only one category—number seven— even remotely required that the seized information or evidence have any possible relation to any criminal activity. Reminiscent of the 1985 raids in which cookbooks and poetry were seized as subversive literature, it would authorize seizure of high-school chemistry books on the ground that they were relevant to “chemicals that could be used to make explosives.” Puerto Rican authorities immediately announced that they had not been warned about any alleged impending attacks. Once again, Puerto Rico’s superintendent of police and Governor were informed of the FBI’s

actions once they were well underway. To date, no arrests have been made, and the inventories left at the places searched reveal they produced a huge number of documents useful for political intelligence and COINTEPRO-style manipulation and attacks.

Once again, the outcry in Puerto Rico is not just because searches were conducted, nor even that they were all directed against prominent *independentistas*, but because of three other factors. The first is the excessive display and, in some cases, use, of force, and the indifference to the civil and human rights of the persons whose homes and offices were being searched. For example, people not accused of any crime, in children of the owners of the houses searched, were handcuffed for hours in the hot sun. The second is the total lack of respect for the Constitution, laws and authorities of the Estado Libre Asociado de Puerto Rico. The third is the unprovoked attack on journalists.

It strikes us as ironic and deplorable that while the FBI created an air-tight perimeter around the rural home of Ojeda Ríos, cut off electricity and telephone service to deny him communication with attorneys, doctors, and others who offered to mediate and assist, at the home of a retired former employee of the State Insurance Fund at 444 Av. de Diego, on a busy street in Río Piedras, it failed to create any perimeter at all, then justified **directly spraying chemical gas designed for defensive use only into the face of members of the press trying to do their jobs by alleging that the press had breached the non-existent perimeter**. You will learn more about that situation from those who witnessed and experienced it personally.

One of the injured journalists, Normando Valentín Quintana, sought to press criminal charges against his assailants for the February 10 incidents. However, the FBI agents involved were not displaying any information that would assist in their identification. Routine efforts by

the Rico Department of Justice to obtain the names of those involved in the search at de Diego Street, where the assault occurred, were fruitless. Every professional journalists' association in Puerto Rico has formally condemned the FBI's use of pepper spray against journalists on the scene attempting to do their jobs. "It gives us pause that in a democratic society, security forces cut off the flow of information, and even worse, attack those who work in journalism," said TV journalist Annette Alvarez, in her capacity as President of the Overseas Press Club. You will hear directly from Oscar Serrano, President of the Puerto Rican Journalists' Association, about his experience there.

V CONCLUSION

At this moment the only federal investigation undertaken is that concerning the use of deadly force against Filiberto Ojeda Ríos, which has been assigned to the Office of the Inspector General (OIG). We commend this hearing for placing the events of September 23 and February 10 in their proper context, and express our concern that the OIG investigation may not have such a perspective. At this point, the people of Puerto Rico can't have much confidence that any agency of the United States government has the political will to conduct any impartial investigation of events related to what can only be described as conflicts between the FBI and the people of Puerto Rico, especially when the victims are *independentistas* or journalists. As part of its responsibility to create a democratic future for Puerto Rico, in which our own civil society takes seriously its responsibility for monitoring human and civil rights violations, the Colegio de Abogados will use the limited power and resources it has, and the enormous resources of our

people, including journalists, to continue to learn and expose the truth about these events.

Meanwhile, the FBI and the United States Department of Justice are doing their best to avoid the truth being known. They have responded to requests for information and evidence from the Puerto Rico Department of Justice with arguments about the “Supremacy Clause” and what they deem procedural defects in subpoenas issued by the local authorities. These only serve to underscore the tensions and resentments created by one-hundred and eight years of United States “supremacy” in Puerto Rico, in violation of international law, and another clash of jurisdictions in the United States District Court.¹² This clash of jurisdictions, and the widespread perception that the federal court in Puerto Rico is too highly politicized a body to do substantial justice when it comes to issues related to the self-determination of the people of Puerto Rico, presents a related, but separate issue we do not have time to explore here.

The recent violations of civil and human rights by the FBI in Puerto Rico are creating a new crisis in our country. They have provoked the indignation of citizens from all walks of life who struggle, under difficult circumstances, to teach and practice respect for the rights of others, and for a rule of law that makes the Constitution, with its limitations on executive authority and a Bill of Rights, the supreme law of the land. They see the FBI acting as an occupying army, with no obligation to respect the rights of anyone, relying upon naked power, their number, their anonymity, their helicopters, long weapons, their tear gas or pepper spray to obtain what they seek and disappear, accountable to no one.

While these incidents occur, discussions are taking place in Washington and Puerto Rico about the possibility of a new decolonization process on Puerto Rico’s political status. As a

¹² See, Memorandum Order in, In the Matter of Application for Search Warrant–Motion to Quash Subpoena, Misc. No .06-49(JAF)(March 3, 2006). The District Court’s findings about the actions of journalists and the conditions during the searches is all based upon sealed pleadings submitted by the United States. No hearing was held regarding these facts.

matter of fact, many statehood supporters have been very active in criticizing the FBI's actions because they strongly believe they are directed to negatively to affect the decolonization process and the statehood option.¹³ Similar claims have been made by all the sectors –*independentistas* and *autonomistas*- that are pushing for a truly decolonization process. It must be noted that the indignation with the FBI's actions came from all sectors.

The Colegio de Abogados has historically supported a permanent and peaceful resolution, according to international law, to the crisis created by the invasion of our country in 1898. Notwithstanding bombs, threats and other forms of repression, we have, and will continue to appeal to international law as a source of norms for the decolonization of Puerto Rico, and advocate for a constituent assembly as the appropriate mechanism for doing so. These matters are far beyond the scope of this hearing. But we have lived through too much history to believe that there is no connection between this fact and the moment chosen by the FBI to make its imposing displays of force and allegations that *independentistas* represent a threat of terrorism to their own people. History has amply contradicted this assertion, apparently designed to justify displays of extreme force and repression at critical historical junctures. We stand at one such moment now. The efforts made by this body to understand the reality of political repression in Puerto Rico strengthen our faith that democracy is possible for Puerto Rico, and contribute to our hope for a future in which we are free to determine our own future as a well-informed people.

We have no doubt that the only manner in which it can be guarantee the respect of the Rule of Law in Puerto Rico is to have the FBI and the Department of Justice of the United States

¹³ See Ismael Fernandez article in El Nuevo Dia , on March 20 2006. Ismael Fernandez is the most prolific statehood columnist in Puerto Rico

provide us with all the information relevant to the events previously discussed, and those responsible are prosecuted. If none of this happens, the FBI will continue to operate in Puerto Rico with the same impunity as in the past; and the message that will be delivering is that the federal government will grant the FBI apparent immunity from any illegal action in Puerto Rico. In others words, the Puerto Rican people have no constitutional or humans rights against the FBI.

I certainly hope this is not acceptable to you, and you will make sure that the Puerto Rican government will not be prevented from identifying what illegal actions were committed on September 23 and February 10. The Congress must demand that the agency comply with Rule of Law – including all treatises on human rights to which the U.S. is a signor. The world is watching

Thank you